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EX PARTE OR LATE FILED

USWEST

EX PARTE FILING

December 21, 1999

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, SW, TW-A325
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: MCI WorldCom December 3, 1999 *Ex Parte* In the Matter of Implementation of the
Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of
1996, Policies and Rules Concerning Unauthorized Changes of Consumers Long
Distance Carriers, CC Docket No. 94-129

Dear Ms. Salas:

Please arrange for this *ex parte* filing to be associated with the above-referenced docket (an extra copy is also provided pursuant to the FCC's *ex parte* rules).

U S WEST has received a copy of an *ex parte* filing made by MCI WorldCom on December 3, 1999 with respect to the above-referenced docket. That correspondence reflects that a meeting took place on December 2, 1999 between MCI WorldCom employees and Glenn Reynolds and Kim Jackson of the Commission's Enforcement Bureau. In the written *ex parte* memorializing that meeting, MCI WorldCom made the following statement: "Additionally, we discussed Ameritech's and U S WEST's requirement that a multi-line customer freeze all of its lines, rather than just those lines that the customer would like frozen, which MCI WorldCom believes to be in violation of section 64.1190 of the Commission's rules."

Summary

U S WEST herein responds to MCI WorldCom's advocacy regarding the meaning of Section 64.1190 of the Commission's rules.¹ We have had more than one communication with MCI WorldCom regarding this matter. It is our opinion that, taken as a whole, the Commission's rules (as educated by the narrative in the Commission's Slamming Order),² use the term "account level" not to

¹ 47 C.F.R. § 64.1190.

² In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers, Second Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd. 1508 (1998) ("Slamming Order").

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force carriers to go through each working telephone number (or “WTN”) associated with a billing telephone number (“BTN”) but to describe a situation where choosing to freeze one type of service on an account (an interexchange service, for example) automatically freezes the other carrier choices on the account (the intrastate service, for example). We are also confident that our position reflects customer expectations, and in no way operates to frustrate customer choice. Customers remain free to choose different carriers for their different WTNs. And, the carrier choices the customer makes become frozen through a simple process of freezing the carrier choices at the BTN level.

Text of Rule 64.1190 dealing with “Preferred Carrier (“PC”) Freezes”

Subsection (a) of that rule defines such a freeze as an action that “prevents a change in a subscriber’s preferred carrier selection unless the subscriber gives the carrier from whom the freeze was requested his or her express consent.” This subsection imposes no particular form or methodology by which a freeze must be accomplished.

Subsection (b) of the rule imposes a nondiscrimination obligation on local exchange carriers (“LEC”) who offer PC freezes, regardless of the subscriber’s carrier selections. Like subsection (a), this section imposes no particular methodology be deployed with respect to the freeze process.

Subsection (c) of the rule deals with PC freeze procedures, including solicitations for such freezes. This subsection states that freeze procedures “must clearly distinguish among telecommunications **services** (e.g., local exchange, intraLATA/intrastate toll, interLATA/interstate toll, and international toll) subject to a preferred carrier freeze. The carrier offering the freeze must obtain **separate authorization for each service** for which a preferred carrier freeze is requested.” (Emphasis added.)

Subsection (d) of the rule addresses the solicitation and imposition of PC freezes. Subsection (d)(2) addresses the procedures that must accompany the imposition of a freeze. All methods of freeze implementation require a verification that includes the material provisions of a written request for the imposition of a freeze. That is, the provisions of subsection (d)(3)(B)(i)-(iv) apply to the process of imposing a freeze. Subsection (i) specifically requires the “subscriber’s **billing name and address and the telephone number(s) to be covered** by the preferred carrier freeze.”³ From this language, MCI WorldCom argues that a LEC must discuss with a subscriber each working telephone number associated with that customer’s billed telephone number or it would be in noncompliance with the rule.

Subsection (3)(B)(ii) states that the subscriber must evidence a “decision to place a preferred carrier freeze on the telephone number(s) and particular service(s). To the extent that a jurisdiction allows the imposition of preferred carrier freezes on additional preferred carrier selections (e.g., for local exchange, intraLATA/intrastate toll, interLATA/interstate toll, and international toll), the authorization must contain separate statements regarding the particular selections to be frozen.”

³ Compare 64.1160(e)(1) of the rules dealing with requirements for written letters of agency.

MCI WorldCom claims this language also supports its position that each working telephone number must be frozen separately *vis-à-vis* each service to be frozen.

U S WEST disagrees with MCI WorldCom's interpretation. We believe the narrative of the Commission's Slamming Order supports our interpretation of the rules to require that a customer be given the option of freezing a BTN to a particular service. Within each BTN, the customer may have a different carrier frozen for interexchange service than for intrastate service. And, within the BTN, a customer may choose different carriers for different telephone numbers. Having been provided with a full range of carrier choices, it has not been our experience that customers want to "freeze" some of those choices (*i.e.*, some WTNs) but not others. Indeed, it seems irrational for a customer to affirmatively express such a desire.

Language of the Slamming Order

The Commission essentially addresses the matter of PC freezes, insofar as is relevant to the current issue, at paragraphs 121-126 of the Slamming Order.⁴ In paragraph 121, the Commission stated that "It appears that many consumers are unclear about whether preferred carrier freezes are being placed **on their carrier selections** and about which **services** or carriers are subject to these freezes." (Emphasis added; footnote omitted.) Similarly, in paragraph 122 of the Slamming Order, the Commission stated that carriers offering freezes "must provide: 1) an explanation . . . of what a preferred carrier freeze is and what **services** may be subject to a preferred carrier freeze." (Emphasis added.)

The only place in which the Commission references subscriber "account level" freezes is in paragraph 123. There the phrase is put in quotations, suggesting that it was being used in a somewhat different way than the industry might use the phrase.⁵ In that paragraph, the Commission states that it is "address[ing] concerns raised by commenters, including MCI and NAAG [National Association of Attorneys General] that consumers may experience confusion about the differences between telecommunications **services** when employing freezes."⁶ (Emphasis added.) The Commission continued:

[This rule] also serve[s] to prevent unscrupulous carriers from placing freezes on all of a subscriber's **services** when the subscriber only intended to authorize a freeze for a particular **service or services**. We thus conclude that "account level" freezes are unacceptable and that, instead, carriers must explain clearly the **difference in services and obtain separate authorization for each service** for which a preferred carrier freeze is requested. We note

⁴ Slamming Order, 14 FCC Rcd. at 1581-4.

⁵ Indeed, we believe MCI WorldCom has manufactured its entire argument on the premise that the term "account level" has some peculiar industry meaning wherein "accounts" are comprised of BTNs and -- for larger customers -- WTNs. The fact that a customer thinks of its "service" as a single account is simply ignored by MCI WorldCom.

⁶ Slamming Order, 14 FCC Rcd. at 1582 ¶ 123.

that a broad range of commenters . . . agree that customers should have the ability to place individual freezes on their **interLATA, intraLATA toll and local services**. While some members of the public may still be unclear about the distinctions between . . . intraLATA toll and interLATA toll **services**, we expect that carriers can help customers to develop a better understanding of these **services**.⁷ (Emphasis added.)

There is no disputing the fact that in addressing “account level” freezes, the Commission was attempting to put a stop to the practice where, if a customer asked for their interexchange carrier choice(s) to be frozen, the entire “account” and all the other serving carriers would be frozen as well. (This was a practice that was not uncommon at the initiation of freezes, since the systems were not in place to do a “jurisdictional” (i.e., interstate/intrastate or interLATA/intraLATA) freeze.)

Customer Expectations

In addition to the fact that the Commission’s rules do not compel a LEC to go through each WTN and ask the customer if he/she/it wants that number frozen (with the technical consequence that if they say “no,” a freeze on the BTN itself would be impossible for some systems), customers do not expect such interrogation. Customers are free to choose different carriers for different WTNs incorporated under a BTN. If a customer is interested in “prevent[ing] a change in [the] subscriber’s preferred carrier selection unless the subscriber gives the carrier from whom the freeze was requested his or her express consent” (the language of Section 69.1190(a)), freezing the BTN and all associated WTNs gives the customer precisely the result desired, i.e., preventing a freeze of the carrier selections already made.

Moreover, it is irrational to assume that a customer wanting to implement a PC freeze would not want to freeze all the WTNs associated with the BTN. Why would a customer want to not freeze one of its lines, after expressing a desire to freeze lines in the first instance? Would the customer want that line to be vulnerable to slamming but not all the other lines? Thus, even if it were technically possible to accomplish what MCI WorldCom wants, and MCI WorldCom were agreeable to footing the bill for the costs associated with the necessary systems changes (which U S WEST highly doubts), once having accomplished the technical capability, it is inconceivable that it would be utilized in any significant manner.

⁷ Id.

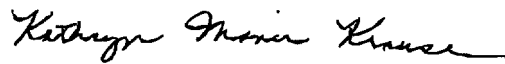
Ms. Magalie Roman Salas

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Should you wish to discuss this matter further, please do not hesitate to contact me at the above number. If I cannot answer your questions from a factual or technical perspective, I can contact the knowledgeable U S WEST personnel to get you the information.

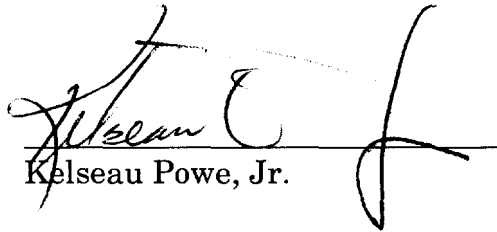
Sincerely,

A handwritten signature in cursive script that reads "Kathryn Marie Krause".

Kathryn Marie Krause

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 21st day of December, 1999, I have caused a copy of the foregoing **EX PARTE FILING** to be served, via hand delivery or first class United States mail, postage pre-paid, upon the persons listed on the attached service list.


Kelseau Powe, Jr.

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